

CURRENT LEGISLATION

BLUE SKY LAW

UNIFORM SECURITIES ACT

While only a small amount of significant new state security regulative legislation has appeared this year, the adoption by Maryland of the Uniform Securities Act¹ carries much import in the area of blue sky law.

Maryland, which has previously had only anti-fraud² and broker-dealer registration³ provisions on its statute books and has not actively engaged in blue sky regulation until now,⁴ has adopted substantially all of the Uniform Securities Act, including each of the four parts which comprise it.⁵ Such a step is a major one for Maryland, a state which in the past has had only minimal security regulation legislation.

The first part of the Uniform Act was enacted virtually verbatim in the Maryland code⁶ thereby adopting completely the fraud provisions contained in that part of the act. In sections 15 through 18 of its act Maryland has adopted the second part of the Uniform Act, but in doing so has manifested an apparent legislative intent not to require investment advisors to be registered. Thus the act contains Professor Loss' second alternative treatment of investment advisors, which applies all of the fraud provisions of the first part of the act to them,⁷ but does not stipulate that they be registered, as is required of the broker-dealers and agents.⁸ This alternative is offered by Professor Loss in Appendix C-1 of the Uniform Securities Act.⁹

By eliminating the Uniform Act provision which automatically registers partners, officers and directors of a broker-dealer concern when the concern itself is registered,¹⁰ Maryland thus requires each such party to

¹ Maryland Securities Act, Maryland Laws, S.B. 5 (1962), adopted March 23, 1962, effective June 1, 1962; 1 Blue Sky L. Rep. ¶¶ 23,301-32.

² Md. Ann. Code art. 32-A, §§ 16, 17.

³ Md. Ann. Code art. 32-A, § 13.

⁴ Loss & Cowett, Blue Sky Law 49 (1958). Until the adoption of this act an Assistant Attorney General has been the actual administrator of the blue sky law in Maryland and has spent only a relatively small amount of his time on it.

⁵ The Uniform Securities Act was drafted by Professor Louis Loss of the Harvard Law School, together with Mr. Edward Cowett as Research Associate, at the request of the National Conference of Commissioners on Uniform State Laws and was approved by them on August 25, 1956.

The first three parts of the act represent the basic "blue sky philosophies": (I) the fraud approach, (II) the registration of broker-dealers and agents, and (III) the registration of securities. Part IV contains general provisions such as definitions, exemptions, judicial review, investigatory policies, and injunctive and criminal liabilities. Official Code Comment, 1 Blue Sky L. Rep. § 4901.

Also see: Legislation, 3 B.C. Ind. & Com. L. Rev. 455 (1962) for an analysis of the Uniform Securities Act, its background and its present extent of adoption.

⁶ Maryland Securities Act §§ 13, 14 (1962); 1 Blue Sky L. Rep. ¶¶ 23,301; 23,302.

⁷ Supra note 6.

⁸ Maryland Securities Act §§ 15-18, 38(f) (1962); 1 Blue Sky L. Rep. ¶¶ 23,303-06; 23,326.

⁹ 1 Blue Sky L. Rep. ¶ 4953.

¹⁰ Maryland Securities Act § 16(a) (1962); 1 Blue Sky L. Rep. ¶ 23,304. This alters Uniform Securities Act § 202(a); 1 Blue Sky L. Rep. ¶ 4912.

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be registered individually, along with the broker-dealer firm itself,¹¹ the fee being an extra two dollars for each such individual in the concern. Also in this section, Maryland has a \$15,000 minimum capital requirement for broker-dealers and has imposed a ceiling on aggregate indebtedness, the maximum being 2,000 per cent of their net capital.¹² The Uniform Act calls for a \$10,000 surety bond at the Commissioner's order and relieves this bond requirement when and if the broker-dealer's net capital exceeds the stipulated \$15,000 minimum by \$10,000.¹³ Maryland has adopted these provisions,¹⁴ but does not relieve the bond requirement no matter how large the broker-dealer's net capital worth may be.

The third part¹⁵ of Professor Loss' four-part severable draft, this part dealing with the registration of securities, is enacted with a few small variations. Notification, coordination and qualification, the three types of registration found in the Uniform Act,¹⁶ are embodied in the new Maryland Securities Act. Registration by qualification under the Uniform Act empowers the Commissioner to call for any of the extensive information which he may require for this type of registration to be put into a prospectus, and this prospectus must then be sent to all offerees of that particular security so registered.¹⁷ Maryland has embodied this provision in its registration by qualification,¹⁸ but also provides that such a prospectus can be called for in conjunction with an issue that is registered by notification.¹⁹ Thus the Maryland act rings strongly of disclosure as a legislative philosophy for protecting the public through registration and regulation of securities.

Registration by coordination is carried out in Maryland as called for in the Uniform Act and is maintained in accordance with the Securities and Exchange Commission's regulations concerning documents filed with them.²⁰ Some deletions from the Uniform Act²¹ were made in drafting the Maryland law where it deals with the registration of securities.²² One such deleted subsection deals with escrow requirements which the Uniform Act provides for in such situations as when a sale or option on an issue is made at substantially less than the public offering price.²³

Maryland follows the Uniform Act in its requirements for an administrative revocation or suspension of a particular issue's registration, these grounds being the same as would cause the original application for registration to be denied.²⁴

¹¹ Maryland Securities Act § 16(b) (1962); 1 Blue Sky L. Rep. ¶ 23,304.

¹² Maryland Securities Act § 16(d) (1962); 1 Blue Sky L. Rep. ¶ 23,304.

¹³ Uniform Securities Act § 202(e); 1 Blue Sky L. Rep. ¶ 4912.

¹⁴ Maryland Securities Act § 16(e) (1962); 1 Blue Sky L. Rep. ¶ 23,304.

¹⁵ Uniform Securities Act §§ 301-06; 1 Blue Sky L. Rep. ¶¶ 4921-26.

¹⁶ Uniform Securities Act §§ 302-04; 1 Blue Sky L. Rep. ¶¶ 4922-24. See also Legislation, 3 B.C. Ind. & Com. L. Rev. 461-63 (1962).

¹⁷ Uniform Securities Act § 304(d); 1 Blue Sky L. Rep. ¶ 4924.

¹⁸ Maryland Securities Act § 22(d) (1962); 1 Blue Sky L. Rep. ¶ 23,310.

¹⁹ Maryland Securities Act § 20(c) (1962); 1 Blue Sky L. Rep. ¶ 23,308.

²⁰ Maryland Securities Act § 21(d) (1962); 1 Blue Sky L. Rep. ¶ 23,309.

²¹ Uniform Securities Act §§ 305(f), (g), (h); 1 Blue Sky L. Rep. ¶ 4925.

²² Maryland Securities Act § 23 (1962); 1 Blue Sky L. Rep. ¶ 23,311.

²³ Uniform Securities Act § 305(g); 1 Blue Sky L. Rep. ¶ 4925.

²⁴ Uniform Securities Act § 306; 1 Blue Sky L. Rep. ¶ 4926. This section allows

In the fourth part of the act dealing with general provisions the Maryland law is again almost identical to the Uniform Act. In the section exempting certain transactions from registration, Maryland has adopted the Uniform Act's limited offering clause,²⁵ but allows for twenty-five offerees instead of ten and does not require that there be no solicitation commission connected with the transaction.²⁶

An additional exempted transaction is found in the Maryland act in its allowance that a non-issuer sale be exempt if the security involved was at one time registered under the act with no subsequent stop orders entered against it. Such sale must be made for a seller who holds less than ten per cent of the issuer's voting securities and must not be a part of a distribution allotment taken by the seller.²⁷

The opportunity for judicial review of any orders or decisions of the Commissioner is covered by Maryland's Administrative Procedure Act, and this is included in the Securities Regulation Act by reference.²⁸

Maryland has adopted both sections of the act which deal with consent to service of civil process. It includes section 414(g), calling for irrevocable express appointment of the Commissioner as attorney for receiving personal service in application for any registration.²⁹ Section 414(h) dealing with constructive consent to the service of process as the basis for personal jurisdiction also is found in the Maryland statute.³⁰

With these relatively minor changes, then, Maryland has taken a major step towards uniform state law in the blue sky area by its adoption of the Uniform Securities Act. It is the fifteenth jurisdiction to accept the act, and its version is one of the closest in its formulation and content to the Uniform Act which has as yet been adopted.³¹

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the Commissioner to issue a stop order on a particular transaction or issue if he finds (1) that the order be in the public interest, and (2) that one of eight specific characteristics be found in regard to the issue or transaction in question or in regard to the registration application. In the Maryland Securities Act this section is adopted verbatim, with the exception that one of the eight stop order causes is omitted. This cause, subsection 306(a)(2)(F) in the Uniform Act, provides that an unreasonable amount of brokers' commissions, underwriters' discounts, or unreasonable kinds or amounts of options may be the basis for the stop order.

²⁵ Uniform Securities Act § 402(b)(9); 1 Blue Sky L. Rep. ¶ 4932. In order that the transactions involving only a small number of offerees be exempted from this registration requirement, the Uniform Act exempted all transactions with ten or less offerees from the registration provisions of the act.

²⁶ Maryland Securities Act § 26(b)(9) (1962); 1 Blue Sky L. Rep. ¶ 23,314.

²⁷ Maryland Securities Act § 26(b)(3) (1962); 1 Blue Sky L. Rep. ¶ 23,314. This section protects the seller who has no significant interest in the issuer, who holds the securities on an investment basis, and who is not one of those who took part of the original flotation for the purpose of its distribution rather than for the purpose of holding the securities for investment.

²⁸ Maryland Administrative Procedure Act art. 41, §§ 244-56, also as called for under the Maryland Rules of Procedure. This section replaces § 411(a) of the Uniform Act; the correlative section in the Maryland act [§ 35(a)] refers to these statutory procedural sections.

²⁹ Maryland Securities Act § 38(g) (1962); 1 Blue Sky L. Rep. ¶ 23,326.

³⁰ Maryland Securities Act § 38(h) (1962); 1 Blue Sky L. Rep. ¶ 23,326.

³¹ Legislation, 3 B.C. Ind. & Com. L. Rev. 218 n.3, (1962).